UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 22-11068 (JTD)
FTX TRADING LTD. *et al.*,	.	
	.	(Jointly Administered)
Debtors.	.	
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ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC.,	.	Adversary Proceeding No. 22-50145 (JTD
	.	
Plaintiffs,	.	
	.	
v.	.	
	.	
FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1-20,	.	
Defendants.	.	
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FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES,	.	
	.	
Counterclaim Plaintiffs,	.	
	.	
v.	.	
	.	
ALAMEDA RESEARCH LLC, *et al.*,	.	
	.	
Counterclaim Defendants.	.	
. . . . .	.	

(CONTINUED)

ALAMEDA RESEARCH LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC. Plaintiffs, v. ROCKET INTERNET CAPITAL PARTNERS II SCS, ROCKET INTERNET CAPITAL PARTNERS (EURO), II SCS, GFC GLOBAL FOUNDERS CAPITAL GMBH, GFC GLOBAL FOUNDERS CAPITAL GMBR & CO. BETEILINGUNGS KG NR. 1, WILLIAM HOCKE LIVING TRUST and 9YARDS CAPITAL INVESTMENTS II LP, Defendants.	.	Adversary Proceeding No. 23-50379 (JTD)
ALAMEDA RESEARCH LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, v. MICHAEL GILES, *et al.*, Defendants.	.	Adversary Proceeding No. 23-50380 (JTD)
ALAMEDA RESEARCH LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, v. SAMUEL BANKMAN-FRIED, NISHAD SINGH, and ZIXIAO "GARY WANG, Defendants.	.	Adversary Proceeding No. 23-50381 (JTD)

FTX TRADING LTD. and MACLAURIN INVESTEMENTS LTD., Plaintiffs, v. LOREM IPSUM UG, PATRICK GRUHN, ROBIN MATZKE, and BRANDON WILLIAMS, Defendants.	Adversary Proceeding No. 23-50437 (JTD) Courtroom No. 5 824 Market Street Wilmington, Delaware 19801 Wednesday, August 23, 2023 1:02 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 1:02 p.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Thank you. Please be seated. Afternoon, I'm sorry. It's afternoon already.

MR. LANDIS: Good afternoon, Your Honor, and may it please the Court. Adam Landis from Landis, Rath & Cobb on behalf of the FTX Trading Limited family of debtors.

THE COURT: Has everyone signed in? I've got more people here. I've only got five people on my list of people here.

(Participants confer)

THE COURT: Do we have another list?

MR. LANDIS: May I approach, Your Honor?

THE COURT: yes.

MR. LANDIS: We do have another list.

THE COURT: All right. Okay. Go ahead, Mr. Landis.

MR. LANDIS: Thank you, Your Honor.

We're here today for our omnibus hearing. And you'll note from the agenda that Items 1 through 8 have been continued, Items 9 through 14 have been resolved, leaving us with two matters going forward. The first is a Chapter 11 case update and the second is our settlement procedures motion, which has been objected to by the United States

Trustee.

I am going to yield the podium to Mr. Glueckstein, who will take it away with Number 15.

THE COURT: Okay.

MR. GLUECKSTEIN: Good afternoon, Your Honor.

THE COURT: Afternoon.

MR. GLUECKSTEIN: For the record, Brian Glueckstein, Sullivan & Cromwell, for the debtors.

And we do want to thank the Court for entering a number of orders on resolved matters prior to today's hearing.

We did want to provide the Court and stakeholders an update on the case since it's been a little bit of time before we last appeared for an omnibus hearing before Your Honor.

Your Honor, the debtors continue to make significant progress every day moving these historic Chapter 11 cases forward on every front. Led by Mr. Ray, the debtors and their team of professionals remain laser-focused on, one, maximizing the value of these estates for creditors through asset recovery efforts, prosecuting legal claims; and, two, distributing that value to creditors through a confirmed plan of reorganization.

And Your Honor, notwithstanding some recent rhetoric from the committee, these cases have seen the

debtors build consensus and resolve most issues constructively and efficiently, which has resulted in most of the work taking place outside the purview of this courtroom and Your Honor. I, therefore, want to take a few minutes to provide an overview for stakeholders and the Court of the significant developments in both of these areas over the past few months and what is coming next.

We do have -- I did prepare a few demonstrative slides to aid the discussion, if we can bring those up.

(Participants confer)

MR. GLUECKSTEIN: Your Honor, this slide is kind of an update of -- a lot of these slides are kind of an update of slides we've shown previously. But this slide shows the continued progress of the debtors' asset recovery efforts, along with those assets known at this point to be recovered and currently held by the United States Government.

At current asset pricing, which reflects some volatility in the cryptocurrency markets, the debtors today have approximately 7 billion of assets that are marshaled and available for distribution from the estates, including approximately 2.7 billion in cash assets.

You can go to the next slide.

Some of the recent significant events since we've last been before Your Honor are included in this slide. And to highlight a few, Your Honor:

In June, we filed the second interim report of Mr. Ray to the board, detailing the extent to which the FTX group, from its inception, commingled customer deposits and corporate funds, and how Mr. Bankman-Fried and the other founders misused those funds at will for speculative trading, investments, the purchases of luxury properties, and political and other donations for personal gain.

The debtors recently filed their 2022 federal tax returns for all of the FTX debtors, a herculean task given the starting state of the information on the petition date and the information that was necessary to file those returns. And that's a significant milestone given the claims that have been asserted by the IRS in these cases preliminarily.

The debtors have continued to successfully rationalize its workforce, exit contracts and leases.

We've launched an online customer portal for filing customer claims in connection with the upcoming customer bar date, which, as Your Honor knows, is set for September 29th. Thousands of new claims are being submitted daily through the portal. The portal allows customers to also review their balances as of the petition date and their historical transaction history.

The debtors are currently pursuing a sale process for the FTX.com exchange, which is ongoing, and for which there is significantly in -- significant interest. We know

this is an important issue for the creditors' committee and many creditors of these estates.

The debtors have been able to return over $150 million of customer segregated funds at FTX Japan, pursuant to local law.

And on July 31st, the debtors filed their draft framework plan of reorganization, which I will talk more about in a few moments.

Go to the next slide, please.

On this slide, Your Honor, we go through -- there are a few -- it shows some of the detail about the debtors' continued progress on major areas of the case.

In this column, the first column, there's numbers here around asset management and the debtors' continued work in this area. The board of directors continues to monitor exposures to the fluctuation of cryptocurrency markets. And we've spent significant time with the committee on a plan for managing and monetizing the debtors' cryptocurrency holdings.

The second column here highlights very significant progress the debtors have been able to make in recent months through their investigation process and turning that prod -- work product into actionable litigation claims. To highlight a few:

We have stated before, Your Honor, that we will hold accountable those individuals responsible for FTX's

collapse and we will pursue recovery of funds improperly transferred away from the debtors pre-petition, and we have started to do that. If funds are not returned voluntarily, we will pursue them through litigation.

The debtors filed a forty-eight-count action against Mr. Bankman-Fried and other insiders for breach of fiduciary duty and to avoid various transfers.

The debtors have also filed significant fraudulent transfer actions and related claims:

Claims relating to the K5 investment to recover over $700 million;

Claims relating to the purchase of Embed Financial in the months prior to bankruptcy to recover approximately $300 million;

A three-hundred-million-dollar action relating to FTX Europe;

A seventy-five-million-dollar action relating to an investment in Latona.

The debtors, also last week, filed a motion that will be heard at the September omnibus hearing seeking approval of an important settlement with the Genesis debtors and their affiliates that will return significant value to the estate and avoids litigating difficult issues involving dueling debtors, given their Chapter 11 cases pending in New York.

The debtors continue to analyze the multitude of potential preference claims and expect to soon file a number of large preference actions to return value back to these estates. The litigation recovery efforts will continue in parallel with the plan confirmation process and our asset recovery work.

There's also been significant M&A and venture book activity over the past few months, highlighted by the LedgerX sale and monetizing interest in Sequoia Heritage. That work continues, as well, with many more investments still to be monetized.

That brings us to the next slide, Your Honor, which is Slide 5. And this depicts our plan time line.

As the debtors continue to bring in value, we are working very hard to get that value into the hands of creditors as soon as possible. Back in April, Your Honor, Mr. Dietderich provided an update to the Court in which he detailed an aspirational plan confirmation time line that looks extremely similar to the one that's set forth on this slide.

The non-customer claims bar date occurred on July 31st, and the customer and government claims bar date is coming up on September 29th.

Importantly, the debtors filed their draft plan of reorganization on July 31st as targeted. The framework for

that draft plan and termsheet was discussed at length over the course of months with the committee's professionals and also with counsel to creditor groups such as the Ad Hoc Committee of Non U.S. Creditors.

The debtors and their professionals shared mountains of data and analyses with the committee's professionals and held dozens of calls and meetings in which legal and economic issues were discussed, and those discussions informed the draft plan and termsheet that was filed in July. But as we have said previously, the primary purpose of filing the draft plan was to provide a transparent basis for negotiations among diverse stakeholders of which the committee is one, but certainly not the only one.

The plan termsheet identified several open issues that the debtors know they need feedback on from that diverse group of stakeholders.

If we can look at Slide 6.

We show here these are items that were noted in the filing we made on July 31st and include many key issues still to be negotiated, including:

The amount of property to be allocated to exchange shortfall claims against the general pool of assets;

The decision and manner in which the FTX.com exchange is sold or reorganized;

The post-effective-date claims transfer process;

Governance issues with respect to the offshore exchange, venture trust, and other entities contemplated in the plan.

These are important issues, Your Honor, many of which are intercreditor issues to which different creditors and creditor groups have different views. That is precisely why the debtors solicited feedback from those groups broadly. And that process, Your Honor, is working. We are per -- we are receiving that feedback. The level of engagement from the committee, customer groups, and other stakeholders is high and largely constructive.

If we can go back to the time line on Page 5 -- on Slide 5 here.

The next step, Your Honor, from today in our plan process is meetings that we have scheduled with the UCC, the ad hoc committee, and other stakeholders that are currently scheduled for early September in these cases. Those initial hands -- all-hands meetings, currently scheduled for September 11th and 12th, are very important to permit the sharing of positions, identify issues, and begin in earnest the process of negotiating the plan of reorganization both with the debtors and amongst stakeholders. Your Honor, that is the job of the debtors: To lead those negotiations and to build consensus around the plan. And we believe we'll be able to do that.

On Slide 7, we've shown here as detailed an agenda. We expect to have a comprehensive discussion over these multi-day meetings on a wide range of topics with stakeholders, some of whom have not been at the table until recently.

If we can go back to the time line on Slide 5.

September, obviously, Your Honor, will be an important month.

As noted, the deadline to file customer claims is September 29th.

Mediation with the Bahamas JPLs is moving forward and is expected to occur in September.

The rest of this time line includes an amended plan and disclosure statement to be filed by the end of the year, with a disclosure statement hearing in early 2024 and a plan confirmation hearing no later than the second quarter of 2024.

THE COURT: Mr. Glueckstein, I'm going to pause you for a moment here.

Do we know what's going on with the Zoom here?

(Court and court personnel confer)

THE COURT: Can we get these people off?

(Pause in proceedings)

THE COURT: There we go. And can you give me hosting rights, too, please? Thank you.

Okay. I'm sorry, Mr. Glueckstein. Go ahead.

MR. GLUECKSTEIN: No problem, Your Honor. Thank you.

THE COURT: I don't know if you could see it up there, but we had someone put a white board up on the Zoom call.

MR. GLUECKSTEIN: I usually can, but only with the slides, I actually can't this time.

But Your Honor, we remain on track for the schedule that's depicted here on this slide. And those dates significantly, in our view, we have not needed to push them back at all from what we unveiled in the case time line in April. We are, of course, always looking for ways to further expedite matters, but we believe this time line remains necessary and appropriate at this point.

The other last point I want to note on this time line, which is noted here, that I want to briefly address is the mediation of customer claims and other plan issues, which, of course, is the subject of a motion filed by the committee to compel immediate plan mediation. That's not before the Court today. We obviously re -- the debtors reserve their rights with respect to that motion. But this time line does reflect that, in our time line, we do contemplate mediation occurring, likely in October, as necessary.

And while the committee's motion is -- as I say, is not being heard today, I must note that the debtors, of course, are supportive of plan mediation as part of this process, if necessary, but only after the issues are crystalized and it is clear that the parties cannot resolve them through a good faith negotiation without the assistance of a mediator. Premature mediation doesn't do anybody any good and, in the debtors' view, only would waste resources and is a recipe for failure.

The debtors, of course, have discussed, in connection with this schedule and the upcoming meetings, mediation with the UCC professionals and those representing the ad hoc committee, as well as the class action plaintiffs in these cases. In fact, the debtors have made a proposal for how to structure mediation in phases and are the ones who proposed expanding the scope of Judge Fitzgerald's mandate to address plan disputes beyond those involving only FTX Digital Markets.

The committee's filing of the motion and recent rhetoric is unfortunate, particularly given that the committee's professionals have supported our time line until last week. The debtors have worked tirelessly to develop and achieve consensus with the committee and all stakeholders throughout these cases and will continue to do so. The fact is, at this point, the committee has not made any practical

proposal to move up this time line as depicted here on Slide 5. Although we, of course, remain open to discussions if they have such suggestions.

In the meantime, the debtors look forward to continued engagement with all stakeholders and providing the Court a further update on the plan process at the next omnibus hearing scheduled for September 13th.

Thank you, Your Honor. That's all I have by way of update. I'm happy to answer any questions that the Court may have.

THE COURT: No questions at this time.

Mr. Hansen, do you want to have an opportunity to respond.

MR. HANSEN: I do, Your Honor. Thank you.

Thank you, Your Honor. Kris Hansen with Paul Hastings on behalf of the Official Committee of Unsecured Creditors.

Your Honor, first, the creditors' committee wants the Court to understand that it does appreciate the efforts of the debtors and their professionals to move the cases forward to advance things like the schedules and bar date, the plan termsheet, and the numerous other items that Mr. Glueckstein just referred to. There are many areas in which the committee and the debtors have been collaborating, especially at the professional level.

That said, Your Honor, I am compelled to respond to a few things today:

First, there have been a number of unfounded attacks by the debtors on the integrity of the committee members themselves, and it's unfortunate.

The debtors have repeatedly made reference to committee members conflicts of interest arising from their status as market makers and the debtors have treated the committee members with a misplaced mistrust since the beginning of the cases, using, in our view, the poor excuses of potential information leaks and self-interest to deprive committee members of the access to information that they need to carry out their fiduciary duties and help the debtors in areas where they lack experience and the level of expertise that the committee members themselves have.

The debtors, however, cannot point to an instance of leaked confidential information by committee members or any real self-interest in the actions of those members. I would urge the Court to ignore these attacks as a thinly veiled attempt to divert the Court's attention from the fact that the debtors are not truly engaging with the committee members, as you asked them to do after the first exclusivity extensions, and that the committee members need in order to do their jobs.

I'd also ask the Court to ignore this new mantra

that we're hearing, that it is the ad hoc committee, not the creditors' committee, that contains the real customers in these cases.

As the Court knows, the official committee was appointed by the United States Trustee as a statutory representative for all unsecured creditors in the case. The goal was to have a diverse collection of parties that were represented of the millions of different types of customers and creditors of the debtors, and which is precisely what the official committee has.

And while the committee, official committee, appreciate the ad hoc committee's role in these cases, it's important to note that the parties on the ad hoc committee, who, in their latest 2019, hold almost half of their aggregate claims, are investment funds who bought the customer claims in the secondary market, not customers whose assets were stolen by FTX. To be sure, the committee does include a number of members who were original customers and who were victimized by the fraud.

It's important to also understand, Your Honor, that the aggregate claims held by the ad hoc committee are in the eight-hundred-and-fifty-million-dollar range, and the claims held by the official committee members themselves are around $700 million, contrary to the debtors' assertion that the ad hoc committee holds a multiple of the claims of the

official committee members. And it's not really important anyway because the official committee has its statutory role.

It's also important to view the statements regarding the ad hoc committee's import through a few different lenses, Your Honor, one of which is -- and I'm sure you'll see it soon to be filed -- an agreement between the debtors and the ad hoc committee that has existed since late April or early May, to seek reimbursement of the fees for the professionals of the ad hoc committee, to the extent that they engaged in good faith negotiations on a plan and held their customer litigation in abeyance.

Moving to the cases themselves, Your Honor, they are extremely expensive. They've now moved to a pace of almost $50 million a month in fees, with literally hundreds of lawyers, financial advisers, and bankers working on them practically full-time. The debtors really have no revenue-producing operations and only minimal investment returns, so every dollar spent in the case is essentially a dollar that creditors don't receive. At approximately a million and a half dollars a day in expenses, every day counts.

For its part, the committee has been doing its job, despite the challenges in the relationship between its members and the debtors. In an effort to capitalize on the debtors' vast digital currency holdings and to try to generate some income to offset the fees of the case, as

Mr. Glueckstein pointed out, the committee members and professionals put together a painstaking risk management plan for the hedging and monetization of the debtors' coins, and worked with the debtors and pushed them very hard to advance that process.

The committee delivered that initial coin proposal in April. It's August and the debtors are now filing the motion to undertake that process, unfortunately, right at the point where the digital currency markets are seeing a broad selloff. And the adviser being selected by the debtors to assist them in the process was vetted by and recommended to the debtors by the committee members themselves over the debtors' alternative choices, which we believe to have less relevant experience and whose services would have been far more expensive.

The committee also pushed the debtors to invest in short-term Treasuries to obtain a higher interest rate than it receives through its accounts at Western Alliance. The committee started this effort in March when the debtors were receiving minimal interest on their cash. The debtors responded and renegotiated their banking arrangements, and now disclose that they are receiving approximately four percent interest on their investments, which is a gross number, and it's certainly far better, but it is still a point and a half less than the average yield on short-term

Treasury notes at this point in time and the committee still hopes that the debtors can find a way to diversify their investments and increase the yield on their large cash holdings to try to offset fees in the case.

The committee also pushed the debtors to launch the FTX 2.0 process and to move it quickly to avoid the fast-moving efforts of other market participants like Coinbase and Gemini to fill the void that was left by the collapse of FTX.com. While that process is underway, it has not moved as quickly as the debtors or the committee prefer, and, to date, the committee has been troubled by the nondisclosure to the committee members of the names of the interested parties and the details of the proposals that they have submitted. While we're working with the debtors to try to put more process protections in place -- and mind you, Your Honor, process protections that we don't believe are necessary than the robust confidentiality protections in the committee bylaws, to which the debtors are express third party beneficiaries, we hope that the normal type of access provided to committee members in most Chapter 11 cases will follow, so that the committee members can directly participate in the process and help create more value for the estate.

Again, Your Honor, I really have to stress that this concern that the members of the committee might have some self-interest in connection with that sale process is

not accurate at all and it should never be used to try to prevent the committee members from being helpful in that process. We all have a common goal of trying to get the best result.

The committee has also evaluated the debtors' efforts to sell assets, and supported them at times and pushed back at them at times where it believes that value was left on the table or it was not the right time to sell. For example, as you know, Your Honor, the committee objected to the Sequoia Heritage sale and we would up, through negotiations, saving the estate approximately $1.35 million in penalties on the sale and improving the net proceeds thereof by about seven and a half percent. It's a drop in the bucket, but it was something.

Similarly, the committee did not believe that the debtors should sell one of their crown jewel assets, which was their investment in the AI company named Anthropic, and the committee appreciates that the debtors agreed to ultimately step back from that sales process in the wake of additional investments in the market in Anthropic at higher valuations, and the market's continued investment in its primary competitor, OpenAI, the owner of ChatGPT at truly dizzying valuations.

Here, importantly, Your Honor, is where a fundamental difference in perspective between the committee

and the debtors arises. The debtors have the view with respect to their venture book that the customers never consented to their deposits being used to acquire assets, and so those assets should be monetized quickly and at the best price available, even sometimes at below the purchase price in order to create more cash to ultimately distribute to creditors.

The creditors committee believes that we are where we are and that assets have inherent value, whether people originally wanted to invest in them or not, and that we're looking at an estate that's comprised of those assets, and that this case is ultimately about driving up the ultimate creditor recoveries such that, if an asset is worth more if it is held for a longer duration, it should be. Anthropic, again, is a good example. FTX investment therein could be worth a multiple of its original investment and lead to better creditor recoveries over time.

The IEX transaction is another good example, and a good example of committee and debtor collaboration where their combined efforts led to a better negotiated outcome than IEX initially wanted.

The committee has also worked with the debtors in connection with a number of actions that the debtors have commenced seeking to grow the estate's value. Specifically, the committee has worked with the debtors collaboratively on

their investigation of prepetition professionals and banks, serving multiple joint 2004 motions, joining the meet-and-confers, and allowing the debtors to take the lead where appropriate to avoid duplicative efforts and additional fees. And the UCC has been lockstep with the debtors in their attempt to deal with the Bahamian JPL's unfounded attempts to wrest control of FTX.com property. Indeed, until mid-July and, depending upon the team, until today, the UCC advisers have had a constructive dialogue with the debtors' litigation team on the various investigations and causes of action brought to date.

The committee also took, as you know, Your Honor, the laboring oar in connection with the sealing of customer information where it believes in the virtue of its position and it's glad that the Court agreed.

To give you a little bit of a window into how the committee operates, Your Honor, it meets each week and the committee members and professionals review all open work streams in the case; they make decisions collectively and carefully about how to proceed on the venture assets, the numerous litigation issues, the current 2.0 sale process, the plan discussions and issues, the management of tokens, and the investment of the debtors' cash, among others. The committee also has a number of subcommittees in place to deal with certain of those larger issues, and they meet on an even

more frequent pace.

The committee professionals also participated in plan discussions with the debtors and the ad hoc committee in May, and in June and July, with the debtors. But, as the Court is aware, the committee members were not permitted by the debtors to take part in those discussions, nor were any negotiations had at a principal level, even though I personally asked the debtors repeatedly to do so during the month of July.

The point there, Your Honor, was we believed that we can't lose time. We recognize that the debtors have a timeline, I think that we all want that timeline to be shortened because of how expensive these cases are, and our view was, if the plan structure, which we believed was fairly set at the beginning of July or towards the end of June, was so set, we could bring in the actual committee members, they could meet with the debtors' principals, and we could try to advance what's now supposed to be happening in mid-September into July and possibly through August. However, at the moment, as you heard from Mr. Glueckstein, the debtors have scheduled kickoff meetings on the plan with principals for September 11th and 12th, six weeks after filing the plan term sheet and ten weeks after arriving at essentially the same terms that are in the plan now, and having ignored our requests to have in-person principal meetings to advance the

plan.

We also asked if there was the possibility to have meetings towards the end of August or even Labor Day week because, again, Your Honor, every day counts with the amount of fee burn that we have in this case. Our view is that the debtors and every party in interest in this case simply have to do better because the cost of waiting harms creditor recoveries.

Our motion to mediate, which we'll hear at a different time, Your Honor, I just wanted to give you a little background, is a plea to speed things up. While the debtors cite endless other important tasks, and we agree they're important, we don't believe that any of them are true gating items to resolving the plan and advancing the process where issues can be dealt with along the way to confirmation.

We're also fairly frustrated, from the committee perspective, with one of the reasons that has been cited for the delay, Your Honor. One of the reasons is that the ad hoc committee and the class action plaintiffs need more time to get up to speed and that the debtors said that the timeline was always longer. Our view is that timelines don't need to drive outcomes. We all know the general rule of time management. If you say something will take a day, it takes a day; if you say it will take six weeks, it will take six weeks; unless you do everything you can to try to beat that

timeline. And neither the ad hoc committee nor the class plaintiffs are newcomers to these cases. In fact, each filed their adversary proceedings essentially at the inception of these cases.

The ad hoc committee also participated in plan negotiations in May, and the ad hoc council and certain of its members have been under nondisclosure agreements with the debtors for months, and the debtors have also had immensely-populated virtual data rooms available for parties who are subject to an NDA. So the committee honestly doesn't understand the need to delay to provide more information to the ad hoc committees and the class action parties.

Returning to our mediation request, Your Honor, from a status perspective, the reason we want a mediator there is to help speed things up. We believe Judge Fitzgerald is very experienced and, even if not in a formal mediation session, she should be at and participate in any of the meetings that the parties have with each other so that, if mediation actually needs to happen -- which we believe it does, the debtors don't, you'll rule on that -- if that needs to happen, Your Honor, there's no lead time, it's already ready to go, and hopefully Judge Fitzgerald being there will help the parties move things along more quickly.

In the end, Your Honor, the committee wants to see the cases moved faster to conclusion. We want to save money

and we want to increase creditor recoveries. We believe that all parties in interest want that. And we want a collaborative, transparent, and inclusive process between the debtors and the committee members at the principal level. It is really not a hard ask and it is one that is the norm in most cases.

Thank you for taking the time to hear the committee's update, Your Honor. I'm happy to answer any questions, if you have any.

THE COURT: None at this time.

Anyone else want to be heard?

MS. BRODERICK: May it please the Court, Erin Broderick of Eversheds Sutherland on behalf of the Ad Hoc Committee of Non-U.S. Customers of FTX.com.

I'd like to begin with an acknowledgment of the invaluable contributions that both the debtors and the official committee have made to get us to where we are today. The filing of the draft plan at the end of July did mark a pivotal turning point in these cases into the plan negotiation phase, and the work undertaken by both the committee and the debtors to lay the foundation cannot be overstated. While there's certainly significant work left to be done to get to a confirmable and, hopefully, consensual plan by year-end, the ad hoc committee believes that we are generally at the right starting place, with an initial plan

construct on the table and the appropriate stakeholders now having a seat to negotiate.

The official committee has stressed that the debtors should not pursue a unilateral plan approach, and we wholeheartedly agree. However, we also wholeheartedly agree with the debtors that the draft plan presents anything but a unilateral approach. It is an initial construct, which, notably, no stakeholder group, including the official committee, has had opposition to. The debtors purposely left a number of key inputs open to invite stakeholder feedback and they have expressly committed to amending the plan to accommodate for the feedback that was received. Indeed, the plan term sheet listed a number of key open items to be negotiated with stakeholder, including the official committee, and that list includes each point of contention raised by the official committee in opposition to the draft plan.

In short, we think the debtors have made abundantly clear that the draft plan is a start to an evolving process and negotiations will continue.

Instead, the real issue seems to be that the official committee does not trust the debtors to actually take its input into account in an efficient and timely manner, given the history of negotiations that have occurred to date between the official committee and the debtors. We

respect that the official committee has had a much more involved and longer track record with the debtors than has been afforded to the ad hoc committee to date. We're really not in a position to take sides with respect to what has transpired in the past. We can represent, however, that over the last several weeks we have had very productive discussions with both the debtors and the official committee regarding open items in the draft plan, as well as predicates to getting to a plan confirmation.

The official committee has every right to voice its frustrations and demand improvements to the process going forward, but we'd like to now move forward with the right parties in the room and to proceed on a path of constructive dialogue to narrow the issues in dispute with some compromising creativity and all the necessary stakeholders given an opportunity to participate. Rather than have discussions hijacked to force a premature resolution of what are, respectfully, fairly limited issues of contention that the official committee has raised with respect to the draft plan.

We think it's really important to emphasize that the ad hoc committee is a necessary party to these plan negotiations. We have over 40 members holding claims of nearly 900 million against the debtors on account of the misappropriation of customer assets from the FTX.com

exchange. It's also worth noting that, prior to the Court's redaction ruling we had over two billion in claims represented by the ad hoc committee, and many forced to resign for fear of disclosure.

Our members also represent a diverse cross-section of the FTX.com customer base, from crypto industry pioneers to novice investors, from those that have no Chapter 11 familiarity to large investment institutions with deep restructuring expertise. We speak for both small and large claimholders. While Mr. Hansen is correct that we have a handful of secondary purchasers, all the rest are original holders. Our smallest holder has under a hundred thousand in claims.

While each member of the official committee is an FTX.com customer, they nonetheless have fiduciary duties to all of the debtors' unsecured creditors, which obviously have differing and conflicting interests in some respects. As the independent voice of FTX.com customers, we are driven exclusively to maximize the value for FTX.com customers in recognition of their unique legal rights.

We believe that the ad hoc committee and the official committee are generally aligned. However, as an estate fiduciary, the official committee is simply unable to advocate for the FTX.com customers on the key threshold legal issue in these cases of whether the FTX.com exchange assets,

including the billions of identifiable value that was misappropriated from the exchange, belong to the estates, or whether the assets should be deemed held in trust for the distribution only to FTX.com customers.

Indeed, despite its extremely active role in these cases, the official committee has yet to address the elephant in the room because it cannot do so on behalf of FTX.com customers as an FTX.com fiduciary representing all general unsecured creditors.

While there are a multitude of issues that must be resolved to get to confirmation, we do believe there's also a logical sequencing. Specifically, it makes sense to us for the Bahamian joint liquidators' jurisdictional claims to be addressed first, the customer ownerships issues raised by the ad hoc committee in the class action group to be resolved in the context of a settlement under a plan, and then to tackle the remaining items in dispute, including those raised by the official committee.

I'd also like to note that as for the claim that we should not wait for the input of other stakeholders, including the ad hoc committee, because we've had months of robust discussions and a mountain of information provided to us, respectfully, the committee can't have it both ways. They've complained about the lack of negotiations with the debtors, they've complained about the lack of information

given, and the ad hoc committee has been given significantly less than the official committee. But, again, we want to look forward to collaborating with all stakeholders and ensuring that the plan negotiation process is fair, transparent, and inclusive, and to move full-steam-ahead to reach confirmation as soon as possible.

Thank you, Your Honor.

THE COURT: Thank you.

Anyone else?

(No verbal response)

THE COURT: All right. Well, it's obvious that there's some tension between the parties here, but it's difficult for me sitting here, only seeing the surface of issues, as to what's really going on behind the scenes. I don't understand the issue of the conflict that the debtors believe some of the committee members have, I'm not sure I understand the conflict -- I think I understand the conflict, but I'd like more explanation of the conflict between the committee's ability to raise issues about FTX.com and the customer issue, whether the assets held that were in FTX.com belong to the customers or they belong to the estate.

But I think there definitely needs to be a sharing of information here. We have NDAs in place, I assume, by everybody; correct? I mean, everybody are under an NDA, there are consequences for violating an NDA. So I expect,

unless the debtors can tell me why that certain information is not being shared with the committee because of a concern about a conflict of interest, I would need to know more about that and understand why the debtor believes they can't share that information.

On the question of -- and I understand there's a huge burn rate here, I get that, it's a big case, a complex case -- I would suspect that a lot of the burn rate at this point has to do with the marshaling of assets and the bringing of litigation against various parties. I'm not sure that the plan negotiations will lessen that burn rate and there's still going to have to be litigation, there's still going to have to be marshaling of assets. Obviously, everybody wants to see the plan go forward as quickly as possible because that will help reduce the burn rate to some extent, and to do that on a consensual basis, obviously, is the best way to go instead of having to litigate those issues and spend more money.

So, you know, the issue of the mediation is not in front of me. I understood from the debtors' response to the -- maybe I'm wrong, correct me if I'm wrong -- the debtors' response to the motion to mediate was that the debtors aren't necessarily opposed to it, they just don't think the timeline is right at this point.

MR. GLUECKSTEIN: Your Honor, correct. As I noted

in my remarks, as we -- and we did file a response in response to the motion to shorten -- we embrace mediation, the concept of mediation, Your Honor, you know, we certainly agree. The disagreement is simply one of timing, right? The committee filed what they have deemed to be an emergency motion asking -- and in the order, the proposed order they submitted to Your Honor in respect of that motion, they asked for mediation sessions, you know, with a date to be filled in in August. You know, we're at the 23rd.

Our position has been that we want to have debtor-led plan negotiations with stakeholders around the table to crystalize the issues. The committee has a good sense and they've articulated their issues with the plan, other stakeholders have had less of an opportunity to do so. We think issues need to be narrowed, and we think that will facilitate a resolution and a consensual plan.

We are optimistic, Your Honor, that we will get to a consensual plan in this case, that's my personal view, but we need the opportunity to do that, and our position is just simply that we need to have the opportunity over the course of the next few weeks to have the meetings that are already scheduled on the calendar, identify, discuss, narrow issues, go through the agenda that I outlined on the slide that Mr. Ray has put out to the parties, and allow us to function as the debtor to try to get as far as we can on a plan. Plan

mediation is an important tool and we -- as I said in my earlier remarks, we suggested, given the fact these are all plan-related issues, that Judge Fitzgerald expand her mandate, the committee agreed with that suggestion.

So this is simply an issue at this point, Your Honor, as to whether the Court should order mediation immediately versus the parties moving to mediation after a short negotiation period over the next four to six weeks. That's all we're talking about here and I don't think anything Mr. Hansen said this afternoon differs from that.

And so, from the debtors' perspective, all we're asking to do is to continue with the process we're on. We are making progress and despite some of these issues -- and I'll address the information in a moment, Your Honor, based on Your Honor's comments -- we are making significant progress, despite there being a little bit of airing of the grievances here this afternoon, we're making tremendous progress in these cases, including, as Mr. Hansen acknowledged, on the plan and on the framework plan we filed at the end of July. I understand the committee would like the process to move faster, we all would like the process to move faster, but we believe the correct process is in place.

So Your Honor is a hundred percent correct, the only question presented by the motion and the briefing that's already been put in, and more to come on the mediation

motion, is simply a question of whether we are going to immediately commence plan mediation or whether we're going to do it on the timeline that we set out after we've had an opportunity to have discussions with the parties.

And if I could just -- I wanted to address Your Honor's comments on the information, but --

THE COURT: Yeah, what --

MR. GLUECKSTEIN: -- if you wanted to address --

THE COURT: -- is the debtor withholding information from the committee?

MR. GLUECKSTEIN: Your Honor, I'm happy to have conversations, further conversations with Mr. Hansen. The only information that I think was the subject of the discussion -- and he made -- he said in his comments today the sale process for, you know, the fate of the FTX.com exchange that is still in the relatively early phase has, as I said earlier, there are significant interest from third parties, there's information that's starting to come in on that process to Perella and the other debtor advisers.

We have asked for an actual NDA to be signed in connection with receipt of that information, and that process is, if not -- I think is actually complete at this point, but I could be mistaken; if not, it's very close, and then information on that particular issue will be shared. There has certainly been no general withholding of information from

the committee of any kind, and I think Mr. Hansen alluded to in his comments there's a data room that's available that has mountains of information. And after previous discussions that we've had earlier in the case where we worked through a number of issues with the committee, Mr. Ray directed, you know, all kinds of documents that had been held on a professionals basis to be available to the committee.

So I think what the comments today are on a very narrow issue that I believe is actually resolved at this point, but I don't want to speak for Mr. Hansen. But, certainly from the debtors' perspective, we are not withholding information in any way.

THE COURT: Mr. Hansen?

MR. HANSEN: Thank you, Your Honor. Again, Kris Hansen with Paul Hastings on behalf of the official committee.

In the main, Mr. Glueckstein is right as this is on the dot.com exchange sale process. So, to give the Court a little bit of color, you know, the debtor went out with kind of an RFP process to try to get proposals in with respect to that asset and, you know, from the committee's perspective, the identities of those parties, the terms of their indications of interest, should be available for the committee members' evaluation. It's very hard to do your fiduciary duty when you don't have access to that information

and only the professionals do, that's one.

So what we started to talk about with the debtors was we said, well, our bylaws under which you released all of this previously designated PEO information contained very strict confidentiality provisions and they actually make the debtors a third party beneficiary. And, you know, the debtors said, well, we want you to sign an NDA nonetheless. And really the reason for the NDA, when you boil it all down, is because they want to insert a no-contact provision in the NDA, which essentially says, listen, you committee members are not permitted to have direct contact with any party, forget about 2.0, any party who demonstrates a written indication of interest with respect to a material asset of the estate, it's just not appropriate.

Our response was, how about we ask you if we can speak with them? If the bidder says yes, you guys can chaperone, it's totally fine. To date, the answer to that has been no.

Beyond that, we also wanted to talk a little bit about the process, right? There is going to be a clearing of an initial round of parties into a next round, ultimately, hopefully, into a stalking horse, and then an auction process. In our experience and personally my own experience, both representing debtors and creditors committees, as well as lenders and ad hoc committees, we usually get access to

that process, to the parties in that process. We have a better fundamental understanding of how the decisions are being made and we get to have input on those, especially from a committee perspective, because it's important. The committee members, again, have a fiduciary duty; they also have unique knowledge within the space. The answer we got there too was no.

And so we started to try to work on a protocol of like let's try to describe how this might work and, candidly, Mr. Dietderich and I said let's just tear that up. If you want us to sign a nondisclosure agreement, we'll try to get the committee members to sign that. Again, we don't think it's necessary, but if that's the process you want, we'll do it. We've got to get the information flowing and then to take it step by step.

Obviously, our concern is because the initial answers were no -- and, mind you, we're not at that phase yet, right? We're not at the phase of selecting a stalking horse, we're not at the phase of basically talking and figuring out who's clearing from first round to second round, but that's going to come up and it's really important for the committee members themselves to participate in that. That's one example, but, again, it's not just with respect to 2.0, this no-contact provision is far broader than that, it's any indication of interest by a party with respect to a material

asset of the debtors, regardless of what that is. And, again, the understanding there is let's try to work that out.

And, you know, when we inquired as to like what is the heightened concern here -- you have the standard concerns which exist in every situation, which are bid chilling and, you know, it's the debtors' process that they need to control, but, obviously, the committee has a duty, so there's always a natural tension, but we were getting a pretty heavy undertone of maybe you have a self-interest in the process. You have market makers -- the debtors' statements that you have market makers on your committee. I guess that that was a statement to say the market makers are going to try to talk to the parties bidding in 2.0 to see if they can be a market maker on their exchange in the future if they're successful. That's not going to happen. The members of this committee have a job to do as committee members; they understand that, they recognize what they have to do.

And so we think that all of these, you know, basically guardrails that are trying to be put up to basically say what the committee can and cannot do are unfair, they make it hard for us to be able to do our fiduciary duty because, again, we're just professionals, we have to take our guidance from our members, and it just -- it creates a very complex situation, Judge.

And there have been some other instances where we

have said can we share this with the committee members? The initial reaction was, no, we worked really hard to get through that and we have gotten it further along. You know, you'll see a motion from the debtors -- I don't want to say any names, but with respect to coin management and who they've selected. Sure, I assume, at appropriate times, on a public basis without sharing any private information, I think our members would like to have access to those parties to be able to ensure that they understand what the committee members' views are because they are in that world, right? And the collective professional set here really isn't in that world.

So that's that. I just wanted to address quickly, you know, the conflict that Ms. Broderick brought up, we don't see that at all. We don't believe that the official committee has any conflict of interest in analyzing and making recommendations with respect to essentially, you know, how you split up the plan proceeds between dot.com customers, U.S. customers, other parties. I mean, it's -- the debtors and we have been hard at work on those issues constantly. And, candidly, you know, Ms. Broderick said we have yet to make any recommendations, I mean, we have and we've been in dialogue with the debtors. It's one of our big issues that we think that we can get through pretty quickly and that we can advance the plan.

So, you know, that's a flavor, Your Honor. I know we're digging pretty deep here today, but I wanted to make sure you had a flavor for what's going on.

THE COURT: Where are the committee members on the idea of signing an additional NDA?

MR. HANSEN: We, as professionals, have worked hard with the debtors' professionals to try to negotiate an acceptable form. We don't love this no-contact provision that's in it. I think we've recommended to the committee members that they should go ahead and sign it just so that we get it behind us. If this is really, really critically important to the debtors, our view is, well, let's clear that issue and let's get to the real meat here, which is get us the bidder names, get us the terms of the bids, and then let's talk about what happens in round two. You know, if -- like, for example, one of the protocol provisions was you don't get access to any of the bidders until we pick a stalking horse and we're about to pick a stalking horse, and then you get, basically, to submit questions in advance and then you can have like one call with that stalking horse so they answer those questions in advance. I mean, it's not an earnings call. It's a fluid process; this is what our clients have to do.

And so our view was, I'm not going to agree to that, but let's all step back, try to build trust and

confidence with each other, and see how this process goes. And what we said to the debtors, and they understand this, is, if as we start to move through this process we're not getting the access, we'll either go to the mediator, if she's available and as part of this process -- because, remember, we asked in the motion to expand, if we need to, the mediation help to the 2.0 process -- and then also, if we have to, we'd come back before Your Honor. It's going to start moving fast at some point. So of course, you know, it's an imperfect thing to go to a mediator or come to a court.

And the other thing I'd say on the mediation front, Judge, I agree with Mr. Glueckstein, it's a question of timing for us and our fear is just that, as everything gets staged, the timeline drags out, you know. We had thought, honestly, that the disclosure statement was going to be something that, at least in the timeline that was announced before, that we would be doing that before the end of the year, I saw in today's timeline that that's now a January event. You know, we recognize that, obviously, there's a lot of notice that goes into a disclosure statement like this, but we just had the customer bar date and before that the non-customer bar date. I think those processes weren't perfect, it's not anybody's fault, you know, the portal had some issues, but like those get fixed regularly,

that moved pretty quickly. So we think there's no reason to delay that.

But kind of coming back to the mediation point, I've been involved in a lot of mediations, Your Honor. Some of them are very formal where the mediator wants to hear from one side, they want to hear from another side, there's kind of a shuttle diplomacy process that plays out. I've also been in plenty of more fluid mediations where the mediator attends meetings between parties, listens to the parties as they discuss issues, so that the mediator understands what everybody's concerns are, and then the parties use that mediator as a potential sounding board if they feel that they are at kind of a position where they're stuck.

We do feel that we're a little bit stuck because, again, we asked to meet with the debtors for the entirety of July; at first, the requests were ignored and, at the end, the debtors told us, I think it was probably two or three days before they filed their plan, you know, we can meet on a Saturday, if you'd like. And I think our response to that was we're not going to check that box, it's fine. You can file the plan term sheet and we'll try and talk right away, but can we please meet in August. Nothing happened for the entirety of August, now we're having our first meetings in mid-September. It's not early September, it's the 11th and 12th, and we're flying people in from all over the world for

that.

So I think our quest on the side of the mediation is, get Judge Fitzgerald up to speed on these plan issues, let her attend these meetings. I get it, we're at the end of August now, it's hard to get anything on the calendar for next week or the Labor Day week, it would have been great if we could, but have her attend and have her be a part of the process, so that she can learn and be there and so what we don't have to do -- it's not that big of an additional expense -- so what we don't have to do is wind up talking amongst ourselves, potentially reaching an impasse, then educating the mediator, writing position statements, setting ourselves up for that shuttle diplomacy process that then somehow otherwise delays the plan timeline. That would be a travesty with the amount of money that's being spent here.

And I agree with Your Honor, I don't mean to imply that money is being spent on things that are not important, it is, but it's not going to stop, and the only thing that we feel that will really slow it down or end it, effectively, is getting to confirmation more quickly and getting to the effective date more quickly because then, when we get to the post-reorg date, there's obviously a lot less of courtroom issues, multitude of professionals, et cetera.

THE COURT: Well, let me ask both parties about the information issue. Are you close to resolving that issue

or is that something that you need me to resolve, or is it something that the mediator could get involved in and resolve? Mr. Glueckstein?

MR. HANSEN: Well, Your Honor, I would say, before Mr. Glueckstein speaks, I think we're close. I mean, I sent over a couple of comments to the debtor last night on the NDA, they were noncontroversial, I think they're going to be okay with them, and we would recommend that our members sign them. And the debtors have already committed to them giving the members the information at the initial stage, it's really what comes next. And I think, to be honest, Judge, we're going to try not to bother you. I think we've all committed to work with each other to try to get through that process. It's just that I wanted you to have a flavor for that protocol because, if we do run into a situation which is, no, you can't talk to a bidder, period, not even with us being around, we don't think that's appropriate, and so we're going to be right back in front of you or the mediator.

So my request would be let us see if we can work it out. Understand, now you have a bit more of a flavor for what we think we're going to face, and I hope we don't face it.

But, Mr. Glueckstein, I'm sorry.

THE COURT: Let me ask one more question, though, Mr. Hansen. Is this -- this is not information that you

think you need to have for the plan negotiation process, is that right, or is it -- or is it?

MR. HANSEN: No, Your Honor, on the plan negotiation process, I think we're good. Like we, from a creditors committee perspective, are kind of like in violent agreement on a lot of what's in the plan with the debtors. We worked very hard together on that. There's a few issues that are -- we've highlighted them in our pleading, you know, one is this split between customers and non-customers, let's just call it that -- it's more complex than that, but we'll call it that -- the other one is the use of a recovery right to token or some kind type of tokenized distribution in connection with the plan, and then the other one is post-reorganization governance, which everybody wants to put at the end of the timeline, but it's an important issue for everyone and that's, you know, who comprises a board of directors, who's the actual liquidating trustee, you know, who's in charge of the venture book, you know, the coins that are left over, things like that, the litigation. That's a pretty integral part of the process. We have our views; we don't want to air them here, it's not appropriate, we should talk about them with the debtors, but those are the main issues that we had, Your Honor.

So, no, I think from an information perspective we have what we need at a committee member level for the plan.

The dot.com exchange sale process, it plays into the plan, it's another key asset, and participating in that process on behalf of committee members independently is important for them to be able to carry out their fiduciary duty, but it's also important for them so that they can really, candidly, talk to bidders and understand their view of what a post-reorg exchange looks like, so that they can understand better these issues about recovery tokens and other things. So they do overlap with it as well.

THE COURT: Okay. So I'm happy to give the parties then the opportunity to work out the issues on the information-sharing side, so then the only really -- and it's not before me today -- is the mediation of the plan and whether to get Judge Fitzgerald involved now or to wait to see if the parties can work things out.

I'm not prejudging anything at this point, but I see a couple of problems with getting Judge Fitzgerald involved now. One, is it really an official mediation and, if it's not an official mediation, is it covered by the mediation privilege that would be governed by our local rules? That would be one concern that I have. And, two, if the parties can work it out on their own, I would rather see that happen than get Judge Fitzgerald involved now, as opposed to maybe, you know, a month from now.

But we'll deal with that when we get to the

motion, your motion to speed up the mediation process, but those are kind of my initial thoughts to think about as we get to that point.

MR. HANSEN: I appreciate that, Your Honor.

THE COURT: Okay.

MR. GLUECKSTEIN: Your Honor, I don't want to belabor it -- Brian Glueckstein for the debtors -- but just to be clear -- and I understand, you know, Mr. Hansen wanted to give the Court a flavor of this and, you know, this is taking place, obviously, on the record, as we understand it, the NDA on the exchange sale process, despite the back and forth and negotiations that happened, is complete, and so the information will proceed to be shared.

This issue, we did ask for a formal NDA with respect to this process. It's highly sensitive sale information, we have been relying on the bylaws for other issues, and these are -- the committee members, I have no doubt, are discharging their fiduciary duties, but they are unrestricted cryptocurrency traders, that is a fact. They have not agreed to restrict themselves for purposes of trading, and so an NDA that has appropriate use restrictions and the like we thought was critical before people are talking to prospective buyers of assets, customer lists, et cetera. So we asked for that. We've obviously had a disagreement, as Your Honor has now heard this afternoon,

over the contents of that, I believe that's resolved.

So I don't believe that this issue will continue to be one. Obviously, to the extent we are unable to resolve these issues, the committee, I have no doubt, will come back to Your Honor, but I believe that Your Honor's involvement or a mediator's involvement in the information-sharing issues will not be necessary.

THE COURT: Okay. Thank you.

All right. So, with that, let's move on to the second agenda item for today.

MR. GLUECKSTEIN: Thank you, Your Honor. So moving to the --

MS. SARKESSIAN: I'm sorry, Your Honor, would it be possible --

THE COURT: Oh, Ms. Sarkessian, yes.

MS. SARKESSIAN: -- would it be possible to take a five-minute break? I'm sorry to request it.

THE COURT: Sure, no problem. We'll take a -- let's take a ten-minute recess. We'll reconvene at 2:15.

MS. SARKESSIAN: Thank you, Your Honor.

(Recess taken at 2:03 p.m.)

(Proceedings resumed at 2:16 p.m.)

THE COURT: Thank you, everyone. Please be seated.

All right, Mr. Glueckstein, go ahead.

MR. GLUECKSTEIN: Thank you, Your Honor. Again, for the record, Brian Glueckstein, Sullivan & Cromwell, for the debtors.

The only other matter on today's agenda is Item 16 on the agenda, which is the debtors' motion for an order authorizing and approving procedures for settling claims and causes of action.

Before I get into the motion, Your Honor, the debtors did file a declaration of Edward Mosley at Docket Number 2215-1. It was Exhibit A to the reply papers we filed over the weekend. And Mr. Mosley is here in the courtroom today and available for cross-examination. I would like to request that Mr. Mosley's declaration be admitted into evidence.

THE COURT: Is there any objection?

(No verbal response)

THE COURT: It's admitted without objection.

(Declaration of Edward Mosley received in evidence)

THE COURT: Anyone wish to cross Mr. Mosley?

MS. SARKESSIAN: Your Honor, Juliet Sarkessian for the U.S. Trustee. No, we do not have any cross-examination.

THE COURT: Thank you.

MR. GLUECKSTEIN: Your Honor, the debtors through this motion are seeking an order approving and establishing omnibus settlement procedures which would permit the debtors

to resolve the large volume of smaller claims, primarily the debtors' avoidance claims in the requisite settlement amounts, but any claims are eligible, and this would allow the debtors to resolve this high volume of claims quickly, efficiently, cost-effectively, up to the settlement value cap. The alternative, Your Honor, is the need to prepare and file individual motions, pursuant to Rule 9019(a), send notice to creditors, seek approval from this Court for each and every settlement, irrespective of the size of the settlement and the value being returned to the estates.

These procedures reflect discussion and input from the creditors committee and the ad hoc committee, who we consulted with prior to filing this motion.

As Mr. Mosley states in his declaration, the debtors expect the total number of avoidance claims, including preferences, the recovery of asset transfers, and political and charitable donations, to ultimately number in the thousands. This is not surprising given the facts and circumstances of these Chapter 11 cases.

Mr. Mosley states his view that the administration of the debtors' estates will be facilitated and value-maximized if these settlement procedures are implemented. The only objection to the motion was the one filed by the U.S. Trustee, which we submit should be overruled.

Bankruptcy Rule 9019(b) expressly provides that

the Court may authorize the debtor to settle classes of claims without a further hearing or notice. Furthermore, Rule 2002(a)(3), as Your Honor knows, expressly grants the Court discretion to waive any notice of a hearing on approval of a settlement. The U.S. Trustee ignores the clear authority for the Court to grant this relief that's present in the rules.

The U.S. Trustee also ignores in its objection that these types of orders are often granted when case circumstances warrant them, even up to substantial settlement values in appropriate circumstances, and we cite some examples in our papers of cases where limits of settlement value go into the multiple millions of dollars. And, Your Honor, that makes sense.

Here, the debtors have proposed procedures that permit settlements without individual settlement motions only after notice to the official committee and the ad hoc committee of creditors. Each will have the opportunity to independently ask questions and test the proposed settlements before the debtors proceed with any settlement. We've agreed, after discussions with the official committee, which is actually somewhat unusual in these procedures adopted by courts in this district, that we will provide notice for every settlement, regardless of how small. There's no ability for the debtors to settle claims completely on its

own.

So the idea that we would take a claim that has substantial value and sell it for some low amount and nobody would ever know about it, besides that being a breach of our fiduciary duties, which would never happen, is not possible here. Every settlement will be noticed to the committee and to the ad hoc committee, and only if they don't have any concerns will we be able to proceed without the administrative expense and burden of noticing all of the creditors and filing an individualized motion under Rule 9019(a).

These procedures provide an opportunity for the debtors to significantly streamline what would be uncontroversial settlements and bring that value quickly into the estates. We did carefully review the U.S. Trustee's concerns and after doing so, the debtors determined to make certain modifications that are reflected in the revised settlement procedures contained in the revised order filed at Docket 2215-2, that was filed in connection with the debtors' reply papers.

Your Honor, those changes include reducing the cap on the settled value of claims qualifying under these procedures to a maximum of $7 million, adding the U.S. Trustee as a noticed party, with the expectation that the U.S. Trustee will only interpose objections going forward

based on merits of the claims and not the notice issues that are raised in the objection today, and specify that the debtors will file for purposes of providing additional transparency into what has been happening with respect to settlements. We will file monthly reports disclosing claim counterparties and the amounts of settlements that were consummated in the prior month, pursuant to the settlement procedures.

Nonetheless, we understand the U.S. Trustee is pursuing their objection, suggesting that no settlement procedures of this order are appropriate without the need -- without notice being sent out to a broad set of creditors and much more detailed disclosure on each individual claim that's being settled.

We would submit, Your Honor, that that's not required under the rules, and, certainly, under the facts and circumstances of this case, we believe would vitiate the utility for these procedures. So, absent any questions from the Court, I would happily cede the podium to Mr. Sasson.

MR. SASSON: Good afternoon, Your Honor. Gabriel Sasson from Paul Hastings on behalf of the Committee.

I just rise to support the motion. As Mr. Glueckstein pointed out, we did negotiate and review the motion and the procedures before they were filed. We're happy with the terms of the motion and the procedures as they

were filed and even happier with the revised version that the debtors filed with the reply.

We think that the procedures will promote efficiency, transparency, and minimize the costs in connection with settling these matters. And, with that, again, just any questions or any further questions from Your Honor, we would support the motion.

THE COURT: Thank you, no questions.

Anyone else before I go to the trustee?

(No verbal response)

THE COURT: Ms. Sarkessian?

MS. SARKESSIAN: Good afternoon, Your Honor. Juliet Sarkessian, on behalf of the U.S. Trustee.

Your Honor, the debtors' motion seeks to set up procedures to settle claims held by the debtors' estates. This does not apply to claims against the debtors. So, these are estate claims, but they're seeking to settle with no notice to any parties, other than the Official Committee, the Ad Hoc Committee, and now, at my request, they have added the U.S. Trustee.

The proposed revisions have made some minor improvements, but they have not addressed the main points of the U.S. Trustee's objection. The debtors do not cite to one reported decision or even an unreported written opinion that approved this type of procedure. They have cited a number of

orders in this court, as well as other courts, where they say the settlement procedures are like those proposed by the debtor here, but looking at the ones from Delaware, the procedures are not remotely similar to the ones the debtors are proposing here and, in fact, support the notice and objection procedures that the U.S. Trustee is requesting, if, in fact, Your Honor does entertain allowing some type of settlement procedures to go forward. And I will provide more detail on those cases shortly.

So, a big part of the U.S. Trustee's objection is the definition of what kind of claims are going to be subject to this process. And there's a definition -- small estate claims. Those are the kinds of claims that they say will be subject. The definition of that in the motion -- and that has not been changed as far as I can see in any of the revised papers -- is "certain existing and future affirmative litigation claims and causes of action of the debtor and their estates that are relatively small value, compared to the debtors' total asset base."

So what was not explained is what "relatively small value, compared to the debtors' total asset base" means. What is the debtors' total asset base? What's the numbers the debtors are using for that? That was not disclosed. What "relatively small" means was not disclosed.

Mr. Mosley's declaration describes the claims that

will be subject to this procedure as "smaller in size" without saying as compared to what.

The motion also does not disclose how the value of a claim will be calculated in order to determine if it's of small value and who will be doing such calculation.

THE COURT: It's those claims 7 million or less, right?

MS. SARKESSIAN: Well, see, Your Honor, that's the thing. It's not claims that are valued at 7 million or less. The 7 million is how much is being paid in settlement. So, regardless of what the claim -- it could be a $100 million claim, if it's being settled for $7 million or less, then these procedures would apply to it.

But the motion says the claim also has to qualify as a "small estate claim," but there's no information to figure out how that -- what that determination -- what that definition means. So, really, what we're left with, Your Honor, is saying some claim that the estate has, as long as it's settled for 7 million or less, which is highly problematic, because, again, it doesn't say what the claim is valued at. That's one problem. We need to know what the claim is valued at. That's extremely important. It's more important, frankly, than how much is being paid to settle -- I shouldn't say "more important" -- those are two pieces that are very, very important.

And, then, what that leads into is, you need to know the ratio. What is the ratio of the amount being paid in settlement to what the claim is valued at? And of course if you have those two numbers, you can figure out the ratio yourself.

THE COURT: Well, who values the claim? How are you going to do that? I mean a litigation claim, you can have, you know, a pro se claimant who says, The debtors owe me a hundred billion dollars and they settle it for a hundred dollars.

MS. SARKESSIAN: No, Your Honor. These are not claims against the estate; these are claims the estate holds. This process/procedure is only for estate claims against third parties.

THE COURT: You're right. You're right. Correct.

MS. SARKESSIAN: So the debtors should, I mean, if they're going to settle a claim, one would hope they have some idea what the value of the claim is that they're settling. So either they will have filed an adversary proceeding, in which case, again, one would expect they would have some dollar amount that they're seeking. Certainly, if it's an avoidance claim they would say, How much are they seeking to avoid?

If it's not that kind of a claim, again, one would hope with all of the professionals that the debtor has, that

before they're settling a claim, they have some estimate of what the value of the claim is, otherwise, how can you settle the claim if you don't know what the value is.

And, in fact, I mean, the motion doesn't even indicate that they're going to disclose to the committees what the value of the claim is; only what they're getting in settlement for it. Now, maybe the committee would come back and say, Well, in order to evaluate these -- the settlement value, we need to know how much the claim is, but that's something that's going on behind closed doors, effectively. It is not being -- it is very clear that nothing will be filed on the record as to the value of the claims that are being settled.

What they have -- what the debtors have proposed now, in response to the U.S. Trustee's objection, is that they would file something once a month on the record saying, you know, we settled claims against these parties and for each one, how much they received in settlement. This would be done after the fact, after the settlement is effectively done and over with. That doesn't give anybody an opportunity to object if they have a problem with it. It also doesn't tell them what is the nature of the claim being settled and what's the value of the claim being settled. All I know is --

THE COURT: I thought the procedures did provide

for an opportunity for the noticed parties to object to the settlement before it's actually consummated?

MS. SARKESSIAN: Your Honor, that is only the Committee, the Official Committee and Ad Hoc Committee. Nobody else.

THE COURT: And they've added you to it, as well?

MS. SARKESSIAN: And they've added the U.S. Trustee.

There are many other parties in interest in these cases.

THE COURT: Well, there's nine million. Are they going to give notice to nine million people every time they want to settle a claim?

MS. SARKESSIAN: No, Your Honor, but if it was filed on the ECF, if it was filed on the court docket, then that gives parties a notice. Anybody who's getting an ECF notice will receive notice.

THE COURT: Individual claimants aren't going to get an ECF notice.

MS. SARKESSIAN: If they file 2002 requests they are.

THE COURT: Well, how many of the nine million have done that?

MS. SARKESSIAN: Your Honor, I don't know. There's a fairly good number of parties that have filed for

2002 notice. I don't know the exact number.

I would like to turn to the cases that --

THE COURT: Would that even be adequate notice? If there's five million people who have filed for ECF notification, how many pleadings get filed in this case on a daily basis?

MS. SARKESSIAN: A lot.

THE COURT: Yeah.

MS. SARKESSIAN: And they're all getting ECF notice of it.

Well, Your Honor, I mean, obviously, our position is we don't think that FTX is the kind of case where there should be any kind of truncated notice procedures for settlements of estate claims. And we're not talking, again, claims against the estate, but estate claims; however, if that is going to be approved, if Your Honor is considering that, at the very least, there should be ECF notice.

And this is what's been done. In the cases that the debtors have cited coming from this Court, that is what's been done. And I would like Your Honor to take a moment to go through those cases. I did not pull the New York cases. First of all, the debtors did not attach any of the orders that they are citing to their papers. They didn't even give the docket numbers.

I went to the Delaware cases and I had someone

pull the orders. One of them, building materials case, we couldn't find because the date that was listed for the order was actually a date that was prior to the case being filed. But the other four from Delaware I will address.

One of them is one of Your Honor's cases, J&J Sales. This is an order relating to a motion by Chapter 7 Trustee Miller to settle avoidance actions. I'm not completely clear from the order, but it appears use of the term "avoidance actions," presumably, these are actions that would have been filed, so there would at least be some notice as to what the nature of the claims are.

The first category, which would not require any notice to anybody for the trustee to settle, are claims with a value or gross transfers. So that would be the equivalent of the maximum value of the claims of less than $250,000. That's not the amount being paid in settlement; that's the value of the claim.

Then, once the value of the avoidance action goes between $250,000 and $500,000, Your Honor's order required the trustee to file a notice of settlement with the Court and giving parties in interest 10 days to object. If somebody objected, they would come before Your Honor. And then if the gross transfer -- any gross transfer in excess of 500,000 would have -- would require a 9019 motion.

Similarly, in CR Holdings, also cited by the

debtors, an order from August 2019 by Judge Silverstein, this was a motion by the debtor for settlement procedures. It allows settlements of avoidance actions with gross transfers; again, so that would be the maximum value of 75,000 or less, could be done without any further notice or approval of the Court. If it was between 75,000 and 250,000 of gross transfers, it had to require -- they had to file the notice and give parties in interest a 10-day opportunity to object. If nobody objected, then it would automatically be approved. And then if it's over 250,000, they had to file a 9019 motion.

And then we have Fresh & Easy. With Fresh & Easy, it was the Committee that was seeking to settle avoidance actions. This was an order of Judge Shannon, and there, if the gross amount of the avoidance action was less than $35,000 -- that's what a small claim is, $35,000 -- no further Court approval was needed. If it was between 35,000 and 200,000 -- again, not the settlement payment, but the value of the claim -- in that case, they had to file the notice of settlement procedures. From the motion, I pulled it. It was similar to these other cases. They had to file a notice on the docket and give parties in interest 10 days to object. If it went over $200,000, they had to file a 9019 motion.

The last one from Delaware that they cited was FTD

Companies from 2019 by Judge Silverstein. This order, it stated to apply to both, causes of action -- claims against the debtor, as well as causes of action brought by the debtor, but all the wording of the order talks about allowed and disallowed claims. It talks about a claimant -- clearly somebody other than the debtor, so I think it was really meant to deal with claims against the debtor being settled. But even if it applies both ways, again, you know, the numbers, if a claim was 50,000 or less or 500,000 or less, but the claim was being allowed at only 15 percent, then there was no further requirement. When you started to get into larger numbers, then they had to serve the 2002 list with the settlement notice to all parties in interest. Not some -- not just the committee, not just to my -- all parties in interest had a right to object. And they also specified on the settlement notice what had to go in there. So, it included -- well, again, they talk about proof of claim, because it seemed to apply mostly to claims against the estate -- but what was the original, asserted amount of the claim? What's the proposed amount and priority of the settlement? So, you know, providing more information than what's being proposed here. And then, again, if it went above a certain amount, they would have to file 9019 motions.

Which, by the way, I mean, the debtor can file 9019 motions. They don't have to do a separate one for every

single settlement. I mean, if you had multiple settlements within a period of time, one could file a 9019 motion covering multiple settlements, as long as they gave the relevant information. That is certainly something the debtors could do here; however, again, because of the nature of this case, and, you know, of course, we remember that this a case that Mr. Ray said came in as a dumpster fire and there are certainly issues.

I mean, the claims that the estate holds, not just against the top insiders, but anyone -- professionals, other employees that might have done something or not done something they should have done that caused, in any way, the dumpster fire that this case was -- if the debtor is settling those claims, that should not be behind a firewall; that should be public and not after the fact, after it's settled and done and nobody can object to it, other than the Committee and the Ad Hoc Committee.

As the debtors said when they were talking about negotiating the plan, there's a lot of stakeholders in this case. It's not just the Committee and the Ad Hoc Committee. And, especially when you're talking about numbers as big as a settlement of 7 million and who knows how high the value of the claim is, because that's not even going to be -- that hasn't been disclosed in this motion. We don't know what that top number is, if there is any top number.

All we know is as long as the settlement amount is 7 million or less, nobody, other than the two committees is going to know about it until after it's over and done and nobody can object and that is, in this case, given the types of claims the debtors have, that is -- the U.S. Trustee does not believe that that is appropriate. And it's, again, very different than what we're seeing in the cases that the debtors cited from this jurisdiction. None of those say: Hey, anything goes. There's a certain point that they can -- again, these are small numbers that we're talking about 35,000, 50,000, 75,000 -- that's the value of the claim, not how much is being paid in the settlement -- those are the ones that can be settled without any further notice. Once you go above those, you have to file the notice. You have to give 10 days' objection and if nobody objects, it's automatically approved. It doesn't require Your Honor necessarily to have to sign orders; it would be automatic.

But if somebody, you know, objects, then if it cannot be resolved with the debtors and the Committee, then it would be before Your Honor, which is how it should be. I mean, these are, potentially, very valuable claims of the estate and parties have a right to know what the value of the claim being settled and what the claim is about, especially with respect to those that there's no adversary proceeding.

At least if you have an adversary proceeding

filed, one could look at the adversary proceeding and say, Okay, I can see what's being asked and who it's against and what the nature is. But if they're settling claims before an adversary is filed, which I understand is the intention -- it would include those types of claims as well -- then there's no information in the public record to tell whether the settlement is a reasonable one or not.

And, Your Honor, I would also like to briefly -- there are some exclusions that the debtors put in that would not be covered by the settlement procedures and they -- but it does not include every category that the U.S. Trustee believes it should. They do cover insiders, so that would cover directors and officers. The only problem with that is sometimes there's a not complete agreement on what qualifies as an officer. And the most obvious example is vice presidents. Despite the Foothill decision from this Court many years ago that says if you have an officer title, including VP, you are an insider unless and until proven otherwise. Most debtors I've found take the position that VPs are not officers.

But apart from that, their employees, potentially -- if debtors have claims against other employees that do not have officer titles, they may be significant and I think they are of interest. I mean, we know that things happened in this and we know that people, not only did things

they shouldn't have done, but some people did not do things they should have done. And so the U.S. Trustee believes that all employees, all claims against employees should be excepted out of the settlement procedure, regardless of what the amount is, as well as, of course, directors and officers. And, also, consultants should be added. They say, "professionals," you know, that includes consultants. That's wonderful, but it's not completely clear.

And by the way, Your Honor, the ratio element, I think, is the most important when it comes to determining whether settlement procedures are appropriate. All of the cases, you know, there hasn't been any decision that they cited that's on point. There's not, and I looked in the Third Circuit. There's not a lot of written decisions on 9019(b), however, the debtors cite to Colliers, paragraph 9019.03 for proposition. But what they did not cite to is where Colliers says that when seeking to settle numerous preference actions, quote, The Court could enter into an order authorizing the trustee to settle or compromise any action without further hearing as long as the settlement or compromise in that is not less than a certain percentage of the recovery sought in the complaint, closed quote. And I think that's the key factor, and that factor was also discussed in the case that we cited to, New Era Philanthropy, which is an Eastern District of Pennsylvania case.

So, in sum, Your Honor, the U.S. Trustee believes that the debtors do have options here, instead of these types of truncated procedures like I mentioned, doing 9019 motions that cover settlements of multiple claims. But if Your Honor is entertaining allowing some type of settlement procedures, the U.S. Trustee believes that there has to be a limit on the value of the claim being settled. Not just what's being paid, but the value of what's being settled.

And, you know, I think that it's up to the debtors to provide that, but I don't believe it should be more than $10 million. Ten million dollars is a lot of money.

You know, with respect to the amount being paid in settlement, I think that's less critical than the value of the claim and the ratio between the value of the claim and the amount being paid. But, certainly, $7 million is a pretty large amount; again, that's for the amount being paid. But there has to be that ratio in there and I think at the very least, the ratio of what is being paid to the value of the claim, how the debtors value their claim should not be less than 50 percent to be subject to these. If it's less than 50 percent, then they need to file a motion to explain why they are accepting less than 50 percent.

In addition, the notice of the settlements should be filed on the docket and ECF notice will go out in that manner. That is official notice. Anyone who signed up for

ECF notice will get that notice. I have no objection to the notice being served on others, but that, I think, is the minimum and it does not require a lot of work of the debtors to file a notice and there should be an objection deadline. That could be filed at the same time they give the information to the Committee and the Ad Hoc Committee, there should be the same objection deadline and it should also include not just the name of the party they're settling with and the amount being paid in settlement, which is what's being proposed by the debtors, but also the value of the claim and the nature of the claim. What is it? Is it an avoidance claim? Is it a breach of contract? What's the nature and what does the debtor value it at? And the exclusions should be as I just said, extended so that it includes all employees and consultants, whether or not they're insiders.

Now, Your Honor, unless Your Honor has any further questions, that concludes my argument.

THE COURT: Okay. No questions. Thank you.

MR. GLUECKSTEIN: Your Honor, Brian Glueckstein, again, for the debtors.

A few points in rebuttal. The debtors made certain changes to the procedures after carefully reviewing the objections by the U.S. Trustee. Ms. Sarkessian would like to further redline the order, but her real statement was

telling and was revealed. The Office of the United States Trustee's view is that the facts of this case are such that we should have these sorts of procedures, because it's FTX, it's high-profile, there's a lot of parties in interest.

The fact that there's a lot of parties in interest and there are a lot of claims, that the volume of claims is massive in this case, screams out for these procedures. We spent significant time this afternoon in context with the earlier colloquy, discussing the concerns of the creditors about case burn and expenditure in these cases. It makes no sense, Your Honor, for us to need to come forward, respectfully, with a motion for every single claim, irrespective of value, given that we have thousands upon thousands of potential preference claims that need to be resolved in this case.

We have tried to strike the appropriate balance. As I stated earlier, after constructive discussions with the Official Committee, with respect to these procedures, we are giving notice to the noticed parties of every single settlement, irrespective, from first dollar. If we're settling with somebody for $5, they're getting notice of it. We've eliminated, which all of -- many, if not all of the orders that Ms. Sarkessian referred to, have a category of claims where the debtors, in their business judgment, could settle claims because it's simply not worth the

administrative cost.

The Committee is here. They're seated. The Ad Hoc Committee is here. And the U.S. Trustee is going to get notice. If the U.S. Trustee is concerned about a particularized settlement or if the Committee is concerned about the size of the claim versus the settlement, or the ratio that Ms. Sarkessian was talking about, they could have -- we could have those discussions. And if there's a *bona fide* dispute, they can file an objection and all that does is then have us come forward with a 9019 motion if it can't be resolved.

THE COURT: What's the notice going to include?

MR. GLUECKSTEIN: Your Honor, we did not legislate in the procedures specific requirements because these settlements are not one-size-fits-all, and we had this discussion with the Committee. We, obviously, are going to have to provide information about the claim.

But as Your Honor correctly observed, not every claim is -- this is not simply, we have, you know, a number, necessarily. We might with a preference claim. We know the amount. Here's the amount of the preference.

But there are avoidance claims. There are fraudulent transfer claims. There are claims that are unliquidated claims. And, certainly, we have a view, will have a view, as the debtor, of value of claims, but they're

going to be --

THE COURT: Will that be included in the notice?

MR. GLUECKSTEIN: I expect it will be. I expect the Committee is going to ask about what the claim is and what it's worth. I'm reluctant to just say it will be in the, quote, notice, that we give to them every time, because, again, I don't believe this is one-size-fits-all.

And I don't believe this idea of the ratio, as it was being described, of what the claim upside value would be, because again, a litigation claim, you know, you have views of claims, what claims might be worth. You risk-discount it. You think about what a claim is worth, and then you enter into, potentially, a settlement.

This idea of the ratio, I respectfully disagree with Ms. Sarkessian, it's not -- this is not the defining factor here. If we bring forward a 9019 motion, the question is going to be whether it's a reasonable settlement within the range of reasonableness within the debtors' business judgment.

And so if the factors of a particularized claim, in our judgment, are appropriate to settle, that's the size of the claim is appropriate. And, again, the fact that we're giving notice to the committees, and now to the U.S. Trustee, of every single settlement is going to allow those questions to be diligenced. Some of these -- a lot of these

settlements we believe are not going to be, not only not controversial, but they're not going to warrant significant time. We have people reaching out to us all the time that received political donations, charitable contributions. They want to return funds. They might not have all of the funds that were donated or conveyed. We explore those circumstances. We want to talk about a settlement.

It doesn't -- it's just not sensible to have to come forward with a motion or a detailed notice at the outset of the process. We then have to serve those parties.

THE COURT: Well, I don't think she's saying you have to do a motion. I think what she's saying is in the notice that you send -- and she wants it sent -- put on the docket so the ECF notice goes out to anybody who signed up for ECF notice -- but the notice that you send out says the debtors are settling this claim, whatever it is -- preference claim, adversary proceeding, whatever it might be -- we valued the claim at X amount and we've decided to settle it for Y amount.

And then if there's no objection to that, then it's automatically approved. You don't need to come to me. You don't have to file a motion. You just put a notice on the docket. This goes out. If nobody objects, it's going to be entered. I think that's what she's asking for, which isn't unreasonable.

MR. GLUECKSTEIN: Your Honor, if we -- well, I mean --

THE COURT: You're going to send the notice anyway. You're going to prepare the notice anyway, so you've got to send the notice to the Committee, the Ad Hoc Committee, the U.S. Trustee. You just file the same notice on the docket to give ECF notice.

MR. GLUECKSTEIN: Certainly, there's costs associated with the need to serve that notice to the 2002 -- the Rule 2002 list of everybody who, you know, who's asked for notice to be served. So, like --

THE COURT: I don't think she's saying that. She's saying only those who have asked for ECF notice.

MR. GLUECKSTEIN: Well, I mean, I suppose if that's Your Honor's preference, we could do that. We would need, you know, a waiver of the service requirement to just file it on the docket in that regard.

You know, look, there's circumstances where I could see that leading to, you know, in some circumstances, potentially more questions than answers. Again, the Committee is here and is going to have access to the underlying information to evaluate these settlements. And this question of whether or not this is a, quote, small claim, on the facts of this case, Mr. Mosley received that it was. Mr. Mosley has numbers of why this is small compared to

the claims. Obviously, Ms. Sarkessian chose not to cross-examine him, so his testimony is unrefuted.

THE COURT: I don't have any doubt that in the context of this case, you know, a $7 million settlement is a small settlement, but you have to have some understanding of what you believe the claim is worth before you settle, right? I mean, you're not going to settle something unless you say, well, we pegged it at this amount, so we're going to settle it at something for less than that, or we're going to settle for that amount because we think we have a really strong case.

So, you got that -- I mean, the idea that you would have to include what the case -- what the debtor believed the value of the claim was and then what the debtor is settling the claim for doesn't seem to be much of a stretch or much work, because you're going to do that anyway.

MR. GLUECKSTEIN: That's correct, Your Honor, although, I can certainly see circumstances where there's some claims where, you know, the debtor is saying, We think this claim is worth X. In a lot of these cases, it's not going to be -- you know, potentially, with unliquidated litigation claims, you know, it's going to be a range of outcomes, right, if you pursue litigation. As Your Honor knows, right, of course, we have a claim, we believe it's a *bona fide* claim. If we win on these five arguments, it might

be worth X. If -- it could be worth a lot less than X and we have to make a judgment, right, as to what an appropriate settlement is.

THE COURT: I mean, the debtor can -- the all you've got to do is say we don't -- the debtor believes the claim was worth no more than X and we're settling it for Y.

MR. GLUECKSTEIN: Certainly, Your Honor. If Your Honor's preference is to proceed that way, we can certainly include that part of the process.

THE COURT: I think it makes sense.

MR. GLUECKSTEIN: That's fine.

THE COURT: That makes sense.

And Ms. Sarkessian, let me just make sure I understand your position. Am I correct that you're not asking that the 2002 list receive notice; you're saying, Just put it on the docket so that those who receive ECF notice, receive the ECF notice.

MS. SARKESSIAN: Well, Your Honor, it's my understanding that as for anybody who is getting ECF notices is signed up for that, I think that is official service under the Local Rules.

THE COURT: Right.

MS. SARKESSIAN: So I don't object to that, you know, being the service. I understand there might, I guess, potentially, be people on the 2002 list that are not signed

up to get ECF notice. I don't know if that's the case. I would imagine if that is the case, it's pretty minimal.

Would I prefer them to be served, as well? Yes, of course, I would, but if we're trying to compromise, then I think that's a fair compromise.

THE COURT: Well, you know, I think we're trying to give fair notice, but also limit the expense here. So I don't want the debtors to have to send out tens of thousands of notices every time they settle a claim for a hundred dollars.

MS. SARKESSIAN: Understood, Your Honor.

THE COURT: So, I think the order should include that ECF notice is sufficient and waive any notice to parties who have not signed up to ECF notice.

MS. SARKESSIAN: Understood, Your Honor.

MR. GLUECKSTEIN: Your Honor, just to address, briefly, a couple of other points with respect to the scope of the order, we do have language in paragraph 3 that was further clarified. It made clear the types of claims that are excluded from this and that would not be eligible to these settlement procedures. It would certainly include claims against insiders, claims against professionals, or any post-petition claim of any kind.

You know, Ms. Sarkessian is continuing to ask for all employees. We do think that hampers the process,

particularly now if we're going to be filing this notice. If there are employees, for example, who have smaller preference claims or the like, I don't see why a general non-officer, non-insider should be ineligible to be part of this process through the procedures that have been outlined.

So we think the scope of the order, as revised, is appropriate.

THE COURT: The debtors didn't have that many employees, did they?

MR. GLUECKSTEIN: This is certainly not a company where we had thousands of employees. I mean, there were -- you know, there were a few hundred employees at the time of the petition date and so there are, you know, there are some employees. But this is a situation where much of the compensation that was provided to, even, employees, was in the form of cryptocurrency and was held on the exchange. So the fact that employees have claims against the debtor, the fact that an employee might have withdrawn a cryptocurrency within a preference period, for example, so there are claims that, you know, are not Mr. Bankman-Fried and officers and claims that we don't feel need to be treated any differently just because somebody was an employee of the company if they don't meet the standard of being an insider or an officer. And, certainly, if -- you know, these are the types of discussions that I'm sure we will have with the Committee,

the Ad Hoc Committee, to the extent there are any questions about any individual.

THE COURT: Okay. Well, let me ask this question, I have to figure out how to phrase this -- never mind. Never mind.

Given the small number of employees -- oh, here is what I was going to ask. Ms. Sarkessian, is it the U.S. Trustee's position that there is some number below which no notice would be necessary to settle a claim, as some of the ones that you pointed out in the cases that you cited to me?

MS. SARKESSIAN: Yes, Your Honor. I mean, if we're talking about, again, a number that's the value of the claim -- not how much is being paid in the settlement, but the value of the claim -- you know, I mean, in the other cases I was looking at, the numbers were, you know, 35,000, 50,000. So, you know, maybe 50,000 and below -- the value of the claim, not how much is being paid in settlement, because that's a totally different issue.

But right now, there is no number, as far as -- for these procedures, there is no figure that is the figure of the value of the claim. Right now the value of the claim could be anything and be subject to these procedures.

THE COURT: Well, I don't necessarily have a problem with that, because if the debtors are going to give notice that says, We valued the claim at a hundred million

dollars and we're settling it for seven million, that's going to raise a lot of red flags and people are going to start asking questions and there'll probably be objections.

MS. SARKESSIAN: Yes, Your Honor. I mean, that would be helpful.

But in terms of -- I guess, well, one thing I would say in terms of there being a settlement at a dollar amount below which nobody would be noticed, like, even the two committees, I mean --

THE COURT: No, I think the committees would still be noticed --

MS. SARKESSIAN: Okay.

THE COURT: -- and the U.S. Trustee. Just not going out to the ECF notice. Because I don't want, you know, these small claims and there might be one creditor out there who wants to object to everything, you know, and that becomes a problem.

MS. SARKESSIAN: I understand, Your Honor.

I mean, again, to me, that would be -- to tie it to the amount that's being paid in the settlement I don't think is useful, so I think I would say, you know, if there are claims that are 70 -- if the value of the claim that's held by the estate is 75,000 or less, then maybe that would just go to the two committees and the U.S. Trustee. I don't think I would have a problem with that.

THE COURT: Okay.

MS. SARKESSIAN: I wouldn't want to tie it to the amount being paid in settlement because I don't think that's the most important figure.

THE COURT: Okay.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: I don't know if you had that conversation that I had with Ms. Sarkessian.

MR. GLUECKSTEIN: I did. I'm trying to -- yes, Your Honor.

But I think -- look, we're trying to come up with a -- Your Honor, there's a couple of issues raised here, right, and so Your Honor is asking a question now, whether, you know, there's some number by which we don't have to give notice. The introduction of the schedule that we've now talked about doing, right, raises issues for us from the perspective of the bid and the ask.

When we now say, This is the value of the claim as of the debtor, right, we are now telling the world that we settled some particular claim at, you know, X percent of what we have claimed the value is worth, right, where a lot of times in settlement motions, you try not to, particularly if they're weepy types of claims, you know, we try to make clear -- it's not quite as black and white, right. So, we're now putting a schedule out there that says we're settling,

you know, this type of claim in the litigation with particular defendants at, you know, X percentage. That's exactly what Ms. Sarkessian wants the world to see.

From a litigation perspective, that's challenging, so that does, in our -- in my mind, at least, to the question you were just asking, raise -- re-raises the question, should there at least -- does there, at least, need to be some level we can either settle at or, at least, not have to put this notice out to the world, you know, with particular -- under some particular, you know, amount of money so that we're not compounding the problem on these settlements.

So, you know, I understand the desire. And I agree with Your Honor that from an informational standpoint and our ability to provide the information, we're going to have to have the discussions with the Committee. We're going to have to have discussions with the ad hocs and with the U.S. Trustee, but noticing everybody, you know, of all of these settlements now at first dollar, which is what we had agreed to do when this process was not going to be playing out on the court docket, does raise this additional issue of, you know, potentially hindering the ability of us to, you know, maximize the value of one claim versus another of similarly situated claims.

THE COURT: Well, that is a good point that if you have similar claims and you're settling one, then other

claimants will say, Well, you settled that one for X amount. Why don't you settle mine for more or why do you want more from me? It does raise a problem.

Ms. Sarkessian?

MS. SARKESSIAN: Your Honor, could I -- would you like me to go to the podium?

THE COURT: Either way is fine. Wherever you're comfortable.

MS. SARKESSIAN: Well, Your Honor, I know that issue comes up, I think, in a lot of Chapter 7 cases with trustees filing, you know, motions to settle. And I've had situations in which, you know, they're disclosing how much they're getting in settlement, but not how much the claim was. Now, in those situations, you can pull the avoidance actions and actually look and see yourself.

And I've heard that, and it's like, well, in order to determine whether something is reasonable, you have to have both numbers, otherwise, if all you know is how much somebody is paying in settlement and you don't know what the claim is valued at, you have no information. And creditors don't have the information.

So, and you also have the fact that there are many defenses to even just, say, preference actions, right. You know, we settled this one for less money because there was new value or whatever. There's various defenses. So just

because they're all avoidance actions doesn't mean that they're all the same.

And there's going to be -- I'm sure there will be some preference actions in these cases, but the other types of avoidance actions, the fraudulent transfers, and the like, I think, are not cookie-cutter types of things like preference actions can sometimes be with, you know, with trade vendors, for example. So, but even in those cases, I mean, you have to balance the right of the creditors and the public to know what's going on in the cases with litigation strategy.

And because these -- we don't know what these claims are. I mean, honestly, when we're saying they're similar claims, I don't know that they're similar claims. I don't know what the claims are at all -- you can't tell from the motion -- other than there'll be some avoidance. There'll be some non-avoidance. That's all I know. So I don't know if they're similar. I don't even know if they're the same class. I have no idea. Maybe the debtors do.

But even with similar claims, again, there's different defenses. There's different issues. There's different facts. So the mere fact that the debtors settled one avoidance claim for this amount or this percentage and another for different would be meaningless. And, again, does that mean there's no disclosure? Just because, you know,

maybe that gives somebody an argument. You settled these other claims.

And, honestly, Your Honor, even with what they're proposing, they propose to file after the fact, a list of the settlements and the amounts received. Not the value of the claim, but the amounts received. Well, if they're settling that were actually subject to an avoidance action, if you were a defendant in an avoidance action, you could take that, you could go and pull the complaint, and see the amount sought and you can make the calculation yourself, and then argue, well, you took 10 cents on the dollar on this one, so I shouldn't pay more than that. So that's always going to be a possibility even with what they propose, but what they propose is notice after the fact when creditors can't object. So, I don't think it's a -- I don't think it's a significant enough element. The possibility that some avoidance defendants might have some argument looking at what the debtors accepted in other cases, I don't think that's enough to change where I think Your Honor was leaning towards having a notice that gives an objection time and that indicates what the claim is valued at by the debtors, as well as what they're receiving and gives notice, at least, through ECF. I don't think that's a reason to change that.

MR. GLUECKSTEIN: Your Honor, if I may? And, again, Brian Glueckstein.

The issue -- and I don't want to get into, like, every possible hypothetical -- but Ms. Sarkessian is positing that, well, even in our procedure proposal, people would be able to reverse engineer some things, so it's a little bit different. To the extent there's an avoidance claim on file, there's a complaint, there are pleadings, there are documents, there's context to the claim. The problem with what is now being discussed at any -- you know, at first-dollar at every level is, we're putting out a chart that just says, Here's the claim amount and here's the settlement amount. People can just do math, right. There's no context to any of it.

And so, yes, we were intending to put out for disclosure purposes in our proposed procedures, a settlement amount of all the (indiscernible) settlements after the fact so people could see it that the estate took in, you know, X dollars in the month of August. And it is true, Ms. Sarkessian is correct, there is not -- under the procedures that we've proposed, there's not an opportunity for every single creditor in the case to come forward and object to the settlements at these values. The noticed parties have the ability to do that. They will have -- they have access to information that's not public and that is not on the docket.

If the Committee and the debtors don't see eye-to-

eye on the value of a settlement in relation to the amount of the claim as we had proposed it, we would have to come forward with a 9019 motion. And so, you know, I think this is -- I think that Ms. Sarkessian is understating the issue here, because of the fact and what Your Honor asked about as a possible solution here is going to have us filing each time we have a settlement, a notice that says, you know, notice against, you know, Joe Smith, we have a claim for a million dollars and we settled it, you know, for $800,000 and that's just going to be out there for people to know without any context.

So, I do think that to the extent Your Honor is leaning in that direction, yes, we can do it, but I think, then, there should be some exemption at least up to some amount at a minimum, where we could get these truly smaller claims resolved in consultation with the noticed parties, without having to notice every creditor on the docket who has access to ECF. I do think that, you know, at every single dollar level does pose some issues for us.

THE COURT: What level would you propose?

You knew I was going to ask that.

MR. GLUECKSTEIN: I did, and, of course, we're all kind of now, you know, adjusting this a little bit on the fly. But it certainly seems to me, Your Honor, that if the concern is around the claim amount, if the concern that's

being expressed by the U.S. Trustee is claim amount, to the extent that Your Honor shares that concern, claim amount versus settlement amount, which, you know, I don't want to re-hash all of this. We do cite cases where settlement value, as opposed to claim amount is absolutely looked at, but to the extent it's claim amount, then we can put a cap on the claim amount that we're settling for whatever value we settle it at, potentially, under these procedures.

But I think we have to have some ability to take claims that are, you know, in the debtors' judgment that we would be disclosing that claim amount up to, you know, some amount -- I don't know -- $5 million, and then we're settling it for something less than that, that we can do without noticing publicly on the docket. Because I do think we have cases, and Ms. Sarkessian is saying, Well, she doesn't know all the claims we have, but we don't know all the claims we have either, but we know a lot of them now. And some of the claims that have been filed publicly, that we have filed avoidance actions, that are on the docket of this Court, that name numerous Defendants, some of whom are equity holders, received equity distributions, relatively modest amounts, compared to some of the larger issues in those avoidance actions. You know, we have claims like that, that have not been filed, right, where we're talking to parties, where we have, potentially, the opportunity to bring money into the

estate and resolve those claims without the need to file an adversary proceeding.

That's beneficial to the estate. That's reducing costs. And, again, the Committee is going to be at the table to vet any of these settlements, as will Ms. Sarkessian, who's going to get notice of these settlements and can ask questions.

So, you know, if the concern is claim value versus settlement value, I think we -- I would submit, then, we should consider putting a number that, kind of, is a cap on the claim amount at some number that we could do without filing the public notice, because I think that would, at least, allow us to facilitate some of these settlements that, frankly, we might otherwise have to make a judgment: do we want to enter into the settlement under these procedures and disclose this ratio or are we just going to file a motion because we want to give more context to the claim, so we might have to do that.

THE COURT: I agree with that. I think there has to be some amount, claim amount where the debtors can settle without having to do it publicly on the docket. The question is, what's that number? That's the difficult part. How do you put a number on it? I know Ms. Sarkessian said 75,000. That's way too low in the context of this case.

I'm open to suggestions.

MR. GLUECKSTEIN: Well, Your Honor, I mean, again, if we're talking about face value of claims -- I'll call "face value" -- debtors' perceived value of claims, I think to be meaningful here, you know, this is a case that has a lot more zeros than other cases, right, and so I think at a minimum, we need, you know, at least the ability to settle claims that we have valued at, you know, I would think, a few million dollars, $5 million, $3 million, something that gives us a meaningful range to take those claims and resolve them without having to do the public notice process.

I would like to have the opportunity to settle claims beyond that amount, if we're talking about two tiers here, of the larger claims up to the $7 million that we proposed of settlement value by doing the notice procedure that's been talked about. But I think it's critical that we have, at least, a bandwidth that goes -- that has -- you know, that's certainly not $75,000. I think it's got to be -- it's got to start, you know, with a millions on it to really be meaningful. We have a lot of those claims in the small, one-to-three, less-than-five-million-dollar range that need to get resolved here.

THE COURT: All right. I agree with that. I think it does need to be a much bigger number and I do think the idea that a two-tier approach is appropriate so you can go -- the question is, do we put a cap on the claim amount,

as opposed to a settlement amount on the larger claims that can be just noticed to, or they have to be on the docket.

So let's say, I agree with you, 3 million or less can with done without notice on the docket, just to the noticed parties, the Committee, the Ad Hoc Committee, and the U.S. Trustee. Claims -- claim value over something, and then the question is, what's that number going to be? You want to have settlement amounts of 7 million.

MR. GLUECKSTEIN: I mean, perhaps -- I mean, again, Your Honor, I think for that, we're going to make the disclosure publicly, other people can come forward at that level. If we're going to say settlements -- up to 7 million in settlement value, I would propose 20 million in claim value. I mean, that's -- obviously, it would be a settlement at something less than 50 percent, but there's a lot of facts and circumstances here. We could probably do something a little bit less than that if Your Honor preferred, but that's the number that jumps to my head when there's going to be disclosure.

THE COURT: What about 15 million?

MR. GLUECKSTEIN: I think we could live with that, Your Honor.

So, these are for both the 3 million and the 15 million, you're talking about claim amounts, the debtors' assessment of claim amount?

THE COURT: Correct.

MR. GLUECKSTEIN: Under 3 million, we could do it on notice to the noticed parties --

THE COURT: Right.

MR. GLUECKSTEIN: -- without on the docket. And then claim values up to 15 million that we're settling for up to 7, we could file the notice without filing a 9019 motion?

THE COURT: Correct.

MR. GLUECKSTEIN: I think that certainly would work from our perspective. It gives us, at least, a framework to be able to start to resolve these claims, Your Honor. And, of course, if for some reason we find we're in a range that's not working, you know, we can always come back.

THE COURT: Yeah. If you run into problems, I have no problem with revisiting the issue.

Yes?

MR. SASSON: Your Honor, Gabe Sasson from Paul Hastings on behalf of the Committee.

That framework that Mr. Glueckstein described is acceptable to the Committee, as well.

THE COURT: All right. Thanks. Good.

So the only remaining question is do we expand this, the exemptions to include all employees? I don't think that's necessary. I think we keep it at the officers and directors.

In my view, other than banks, I think everybody else would say a vice president is an officer of the company. Banks say they're not, but I mean, everybody else does. So if it's a vice president, that's an officer of the company. I don't even know if they had any vice presidents, but --

MR. GLUECKSTEIN: Yeah, this was not -- they weren't as formalistic in the titles and the like, so we obviously have made these assessments. We have filed statements and schedules that include insiders and the like.

THE COURT: All right. Then I think that resolves everything, right?

MS. SARKESSIAN: Your Honor, can I just ask a clarifying question on that last point?

THE COURT: Yes.

MS. SARKESSIAN: To the extent that there is a settlement with an employee that's not a director or an officer, I would ask that if falls within the -- I guess it would be the three to $15 million value range that they actually had to put it on the notice that's being filed, to please specify that it is a current or former employee of the company. Because what I see a lot in various documents is it'll say, you know, Settlement with Jim Jones. And I'm like, who's Jim Jones?

So, if it's somebody who's actually an employee, just to give people more notice, this is a former employee or

a current employee. Again, they would have to be within that range. I mean, if it's less than 3 million, it's not going to go in that notice -- well, it's not going to go into a public notice. But if they do fall within the three to $5 million range that the public notice will be filed, I would ask that they be identified.

And, similarly, if there's a settlement with somebody else and it's just an individual, to say -- especially if there's not an action filed against the person, to say who that person is, like, was it a consultant? You know, was it a former professional? Some type of information of that kind that I hope the debtors would be willing to do.

MR. GLUECKSTEIN: Your Honor, my reaction on that -- and we'll take the Court's guidance on that, if the Court prefers -- by concern about that, I have no problem making that disclosure to Ms. Sarkessian. On notice on the docket, if we start identifying people as employees, that is, of course, outing them as employees of the company and there is pushback against this company and its employees, whether people are responsible or not.

So, you know, if we start characterizing, you know, the settlements, we're adding another layer of disclosure into that notice, I don't know that that's necessary and I have some concerns on the employee issue, but we'll take the Court's guidance on that.

THE COURT: Yeah, I do have some concerns about identifying people on the docket as employees of this company. I mean, I have no specific evidence to support this, but I know in these types of cases, and I think in this case, in particular, there's a risk of a threat if someone is identified as an employee, so I would say not put that on the docket. You can put it on the notice to the noticed parties, but not on the docket itself.

MR. GLUECKSTEIN: That's fine, Your Honor. Thank you.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: Does that resolve all the issues? This was an interesting session, a mediation session.

MR. GLUECKSTEIN: We appreciate the Court's guidance on this. This is actually, from the debtors' perspective, this type of a process is very important to us so that we're able to start to resolve some of these claims that have started to build up but have not warranted, yet, bringing forward motions. So, this is, you know, we have a lot of people on our team hoping that Your Honor approved some form of this today, so that we can move these forward.

THE COURT: I did notice a few. I've seen a few settlements come through.

MR. GLUECKSTEIN: There have and those have been quite large --

THE COURT: Yeah.

MR. GLUECKSTEIN: -- and those will continue. And, obviously, there have been some very significant settlements. As I mentioned earlier, there's one pending before the Court now that'll be heard at the next hearing.

There are more, and certainly you had a lot of discussion about this, this is the ultimate question of, this is a large volume of claims and so we need to be able to resolve them, of course, but most of the dollars are in this smaller universe of claims that are going to be outside of these procedures and, of course, we're pursuing those and we're bringing those forward to the extent we can settle them.

THE COURT: Okay. All right.

Anything else before we adjourn?

(No verbal response)

THE COURT: All right. Well, thank you all very much.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: Have a good rest of the week and I'll see everybody at the next hearing.

We're adjourned.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 3:21 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling August 24, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams August 24, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand August 24, 2023
Coleen Rand, CET-341
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